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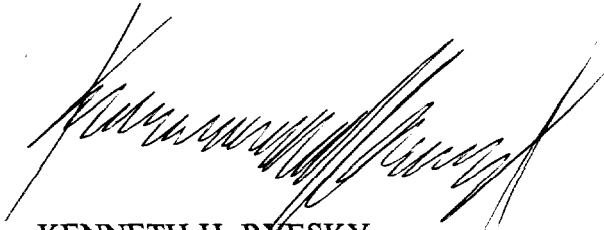
14 February 1997

Docket Clerk
Attn: FHWA Docket No. MC-96-28
Federal Highway Administration
DEPARTMENT OF TRANSPORTATION
Room 4232
400 7th Street SW
Washington, DC 20590

FHWA-97-2350-52

Attached find comments in response to the Notice in the Federal Register of 5 November 1996.

Yours very truly,



KENNETH H. RYESKY

Enclosure

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I. INTRODUCTION:

This commentary is submitted in response to the Notice in the 5 November 1996 *Federal Register*, FHWA Docket No. MC-96-28. The comments herein address the broad issues of national sleep policy vis-a-vis the transportation industry, and the need for legislative assistance in order for the Federal agencies, including the Federal Highway Administration, to effectively promulgate a viable sleep policy. Specifically, there will be a need to amend the Internal Revenue Code in order to better facilitate the implementation of the sweeping changes contemplated for the current hours of service rules.

II. COMMENTATORS BACKGROUND:

Kenneth H. Ryesky, Esq. is an attorney at law, and an Adjunct Assistant Professor, Dept. of Accounting and Information Systems, Queens College CUNY, Flushing, New York. He is the author of "Awakening to the ADA: Sleep Disorders from the Perspective of Title I of the Americans with Disabilities Act" [3 JOURNAL OF INDIVIDUAL EMPLOYMENT RIGHTS 285 (1994-95)] and is a Contributing Author of a "Legal Perspective" column on sleep and the law for the ASDA Newsletter (American Sleep Disorders Association).

Mr. Ryesky has written several published articles on taxation-related issues. Prior to going into private practice and academia, Mr. Ryesky was employed as an attorney for the Internal Revenue Service, Manhattan District.

III. SLEEP POLICY BACKGROUND:

In its January 1993 Report to Congress and to the Secretary of Health & Human Services, the National Commission on Sleep Disorders Research called for "a radical change in the way society deals with sleep--changing it from top to bottom, from birth to death, from the bedroom to the factory, from the Persian Gulf to Prince William Sound." [Report, Chairman's Preface at p. ix]. Much of the Commission's Report dealt with how human sleep **disfunction** in the

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transportation industry exacts an expensive toll in dollars and human lives. The Commission cited a need for a national sleep policy, and a need for coordination and accountability among the Federal agencies in promulgating and implementing a national sleep policy.

The Commission's Report has led to much legislative and regulatory action, including the a re-evaluation by the Federal Highway Administration ("FHWA") of the hours of service rules for truck and motor coach drivers. The FHWA published an Advance Notice of Proposed Rulemaking, with a Request for Comments, in 61 Fed. Reg. 57252 (5 Nov. 1996). Included among the issues in the Notice are split sleep shifts and mandatory rest breaks.

The current "ten-hour rule" dates from the late 1930's. The trucking companies have made significant capital investments in terminals and other facilities whose locations were selected in light of the distances drivers could drive in 10 hours. Now the wisdom of a "ten-hour rule" is being questioned in view of modern scientific sleep knowledge.

Separate and apart from the FHWA, there are other branches of the transportation industry, including aeronautics, rail and maritime. All operate under analogous hours of service laws and regulations, which are similarly being questioned and re-evaluated.

IV. TAXATION CONSIDERATIONS:

The tax angle is as follows: I.R.C. Section 119 and Treas. Reg. Section 1.119-1 impose some stringent rules for excluding the value of employer-furnished lodgings from gross income. Among other things, the lodgings must be on the employer's premises. Moreover, Section 119(b)(1) specifically enables the IRS to second-guess the provisions of state statutes or employment contracts in determining whether employer-furnished lodgings are taxable compensation.

Under the current scheme, transportation companies which provide on-premise sleeping facilities for their drivers, pilots, engineers, et cetera might possibly place the employees into a

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position to exclude the value of those lodgings from gross income. On the other hand, a transportation company which contracts out such sleeping facilities to a motel would place its employees into a position of being compelled to include the value of such lodgings as part of gross income.

Viewing the big picture, the tax laws are somewhat hostile towards the implementation of sound sleep policy in the transportation industry. The tax considerations affecting members of the transportation work force reflect in their compensation demands (N.B. The Teamsters Union, for all its recent problems and setbacks, is still a powerful bargaining entity).

Like other industries, the transportation industry is driven by economic considerations. For example, the recurring problem of logbook falsifications and compelled violations of the current hours of service rules are obviously motivated by the interest of both trucking company and truck driver in expeditiously completing a truck run.

Few forces induce more sweeping changes in industrial culture than tax policy changes. A truly effective national sleep policy agenda must include corrective tax legislation.

V. CONCLUSION:

The National Commission on Sleep Disorders Research clearly envisioned cooperation and coordination among the various governmental units in **formulating** and implementing a national sleep policy. Coordination has already begun between the scientific and transportation disciplines. Taxation expertise must also be involved if a truly sound national sleep policy is to be effectively implemented.

The Department of Transportation cannot do this alone. There must be legislative backing in the form of changes to the Internal Revenue Code, so as to remove many of the current disincentives to providing effective sleep opportunities for individuals involved in the transportation industry.

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